**An Introduction to the International Criminal Court** by **William A Schabas** [2001, Cambridge University Press, Cambridge, ISBN 0-521-01149-3, x + 406 pages; soft cover]

The Rome Conference of 1998 drew together 160 States to discuss the establishment of an international criminal court. On 17 July 1998, 120 States voted to adopt the Rome Statute of the International Criminal Court. There are now 139 signatories to the Rome Statute. Pursuant to Article 126, the Statute shall enter into force on the first day of the month after the 60th day following the deposit of the 60th instrument of ratification, acceptance, approval or accession with the United Nations Secretary-General. Generally, it is expected that the Statute will enter into force sometime in 2002.[1]

Professor Schabas[2] has produced a book about this Court that draws upon his research in the areas of human rights and criminal law. Many readers will find this book useful because he has not only fashioned a fully researched overview of the process of the Court's creation but has also included in three appendices the primary materials. These are the Rome Statute, the Elements of Crimes (pursuant to Article 9),[3] and the Rules of Procedure and Evidence (pursuant to Article 51). The book is formatted into eight chapters, each approximately 20 pages long. Preceding the chapters are a Preface and a handy List of Abbreviations. The primary materials immediately follow the chapters, which in turn are followed by a Bibliography and Index.

Chapter 1 deals with the 'Creation of the Court'.[4] Here, Professor Schabas outlines the early laws and customs associated with war criminals. Starting with the international trial of Peter von Hagenbach,[5] this chapter provides an overview of the development of the law of armed conflict with particular reference to the creation of criminal liability for individuals. The post-World War II trials at Nuremberg and

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[1] For an update of the Statute's status, see <http://www.un.org/News/Press/docs/2002/note5725.doc.htm> (visited January 2002).

[2] Professor of Human Rights Law, National University of Ireland, Galway; Director, Irish Centre for Human Rights.

[3] Articles in this review refer to the Rome Statute.

[4] At 1-20.

[5] At 1.

Tokyo[6] provide the intellectual impetus for a discussion on the efforts of the International Law Commission and United Nations General Assembly to develop draft codes and proposals on an international criminal court in the 1950s through to the mid 1990s.[7] The *ad hoc* tribunals established in Yugoslavia and Rwanda in the 1990s have provided decisions and opportunities that have led to changes in both the crimes and procedures adopted in the Statute's final form.[8] Professor Schabas concludes the chapter by explaining the process adopted in the drafting of the Rome Statute, commenced in 1994, to establish the Court.[9] After considering the material in this chapter and examining the rest of this book, it is difficult to disagree with the concluding words to the chapter:[10]

> The International Criminal Court is perhaps the most innovative and exciting development in international law since the creation of the United Nations. The Statute is one of the most complex international instruments ever negotiated, a sophisticated web of highly technical provisions drawn from comparative criminal law combined with a series of more political propositions that touch the very heart of State concerns with their own sovereignty. Without any doubt its creation is the result of the human rights agenda that has steadily taken centre stage within the United Nations since Article 1 of its Charter proclaimed the promotion of human rights to be one of its purposes. From a hesitant commitment in 1945, to an ambitious Universal Declaration of Human Rights in 1948, we have never reached a point where individual criminal liability is established for those responsible for serious violations of human rights, and where an institution is created to see that this is more than just some pious wish.

Chapters 2-8 examine specific provisions of the Rome Statute. Of particular interest at this point in human history is the reasoning behind the selection of crimes the Court is to prosecute. Chapter 2 examines these crimes.[11] Divided into four categories, the crimes within the

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[6] At 5-8.
[7] At 8-10.
[8] At 10-13.
[9] At 13-20.
[10] At 20.
[11] At 21-53.

Court's jurisdiction are genocide, crimes against humanity, war crimes and aggression. For anyone interested in international crime and the prospective court, the value of this book is evident throughout. In Chapter 2 its value is particularly manifest in the manner by which Professor Schabas explains the background to each crime.

Genocide, contained in Article 6, is discussed by reference to the origin of this term and its use at Nuremberg.[12] The discussion of crimes against humanity in Article 7 is also put in modern historical context by reference to the evolution of the term through twentieth century examples. From Armenian massacres in Turkey through to its use at Nuremberg, Rwanda and Yugoslavia, the definition of crimes against humanity in these settings is shown to have influenced the drafting of the provisions in the Rome Statute.[13] War crimes, dealt with in Article 8, contain the largest number of offences. The author deals with these offences by mentioning the relevant international treaties, conventions and cases that have dealt with "violations of the laws or customs of war".[14] Here, he mentions the Treaty of Versailles, Hague Convention IV 1907, Geneva Conventions 1949, 1977 Additional Protocols I and II to the Geneva Conventions of 1949, and Convention on the Rights of the Child 1989. He also discusses *Prosecutor v Tadic*[15] and mentions *Prosecutor v Aleksovski*[16] and *Prosecutor v Akayesu.*[17]

Terrorism, an international crime that is addressed by way of international treaties,[18] has been left from the categories within the Court's jurisdiction and Professor Schabas succinctly explains the reasons for this. Given the events of 11 September 2001, the United States' 'war against terrorism' in Afghanistan, and the armed Israeli action against Palestinian 'terrorists', it may be that the process of amendment and review of the Statute, provided by Articles 121 and 123, will be seen to be too long.[19] Briefly, these Articles restrict

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[12] At 29.
[13] At 34-39.
[14] At 40.
[15] Case No IT-94-1-T; at 36, 42 and 46.
[16] Case No IT-95-14/1-T; at 46 note 83.
[17] Case No ICTR-96-4-T; at 39.
[18] For example, the European Convention on the Suppression of Terrorism (1978) 1137 United Nations Treaty Series 99.
[19] At 160-162; 244-246.

opportunities for amending and reviewing the Statute until seven years after its entry into force. Since both review and amendment cannot be undertaken before the expiry of this period, the need for a neutral adjudicator on terrorism, such as this Court, with jurisdiction over alleged terrorist events, may soon be seen to be necessary.

Chapter 3 deals with Jurisdiction and Admissibility.[20] Jurisdiction being the "legal parameters of the Court's operations, in terms of subject matter[21]...time[22]...space[23]...as well as over individuals[24]."[25] The controversial issue of Security Council deferral, or veto, of the Court's prosecutions under Article 16 is also addressed. As Professor Schabas indicates, the power of the Security Council to defer a prosecution may be seen as "a blemish on the independence and impartiality of the Court" or a recognition "that there may be times when difficult decisions must be taken about the wisdom of criminal prosecution when sensitive political negotiations are underway."[26]

The problem of the co-existence of domestic legal systems and the Court is addressed by reference to the concept of admissibility. This part of Chapter 3 analyses the complexity of the relationship between State justice systems and the Court through an examination of Article 17. Here, issues pertaining to the legitimacy of State prosecutions and amnesties are addressed, such as the amnesties provided by the South African Truth and Reconciliation Commission compared to the amnesty granted to Augusto Pinochet by Chile.[27] Of particular interest is the difficulty that may be faced by alleged offenders of crimes within the Court's jurisdiction who come from States with underdeveloped legal systems. Simply, a State's unwillingness or inability to prosecute an alleged offender may be due to a lack of machinery to follow due process as defined in Article 17(2). In contrast, Louise Arbour has

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[20] At 54-70.
[21] Article 5: "most serious crimes of concern to the international community as a whole" as dealt with in Chapter 2.
[22] Article 11(1): "The Court has jurisdiction only with respect to crimes committed after the entry into force of this statute."
[23] Territorial jurisdiction is outlined in Article 12(2)(a).
[24] Article 12(2)(b).
[25] At 55.
[26] At 65-66.
[27] At 68-69.

argued that "the difficulties involved in challenging a State with a sophisticated and functional justice system would be virtually insurmountable."[28]

Chapter 4 deals with the general principles of criminal law that need be used where the Rome Statute is silent or ambiguous regarding offences, evidence or procedure.[29] This chapter is divided into nine sub-headings. 'Sources of law' deals with the law, beyond the Statute, that the Court may consider when necessary and it has access to three tiers of law under Article 21.[30] They are:

(1) the Rome Statute itself (including the Elements of Crimes and the Rules of Evidence and Procedure);[31]
(2) "applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict";[32] and
(3) "general principles of law derived by the Court from national laws of legal systems of the world...".[33]

'Interpreting the Rome Statute' gives the author an opportunity to surmise about the different interpretation methods of judges who are international lawyers (who may use the 1969 Vienna Convention on the Law of Treaties to assist them) and those who are criminal lawyers (who may wish to construe strictly the words of the Statute).[34] 'Presumption of innocence' in Article 66 provides more than a statement that the prosecution proves guilt beyond a reasonable doubt.[35] The presumption section of this chapter also outlines the associated rights of the accused including the right to interim release and the right to remain silent.[36] Interestingly, for common law lawyers used to unanimous jury verdicts for the establishment of guilt, guilt beyond reasonable doubt may be found by a majority of the Court under

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[28] At 68.
[29] At 71-93.
[30] At 71-74.
[31] At 72.
[32] At 72.
[33] Discussed at 73.
[34] At 74-75.
[35] At 75-78.
[36] At 76.

Article 74(3).[37] 'Rights of the accused' provides for a comparison of 14(3) of the International Covenant on Civil and Political Rights and Article 67 of the Rome Statute.[38] The author indicates that the minimum procedural guarantees in Article 67 go beyond those in the Covenant and 'Individual criminal responsibility' reinforces the fact that the Court deals with individuals, not States nor corporations.[39]

The analysis in this section also provides an overview of the inchoate offences detailed in Article 25. Command responsibility is dealt with in the section on 'Responsibility of commanders and other superiors'.[40] Where direct evidence against a commander is lacking, Article 28 provides for offences based upon negligence.[41] The section on '*Mens rea* or mental element' shows that the Rome Statute, pursuant to Article 30, is consistent with higher order common law conceptions of *mens rea* – being intention and knowledge.[42] As most of the offences within the Court's jurisdiction have *mens rea* as part of the proof of the offence, the discussion of Article 30 would appear to be largely redundant except that it allows the reader to better understand why recklessness was not included.

The defences to charges – mental illness, intoxication, self-defence, duress,[43] mistake of fact or law,[44] and superior orders[45] – are examined in the 'Defences' section.[46]

The Chapter concludes with a discussion of the problems of limitation periods, 'Statutory limitation', where they exist under domestic legal systems.[47]

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[37] At 77-78.
[38] At 78-80.
[39] At 80-83.
[40] At 83-85.
[41] At 84-85.
[42] At 85-87.
[43] Article 31.
[44] Article 32.
[45] Article 33.
[46] At 88-92.
[47] At 92-93. Article 29 declares: "The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations."

Chapter 5 on 'Investigation and pre-trial procedure' and Chapter 6 on 'Trial and appeal' discuss the Court's specific processes. For readers without experience or knowledge of aspects of comparative law, these two chapters provide a neat overview of the major differences and similarities between the two main approaches incorporated into the Statute, namely, the common law and the inquisitorially-based civil law systems that are illustrated as a means of explaining the Court's processes.[48]

Specific attention in Chapter 5 is paid to the manner of initiating prosecutions, the two preliminary proceedings available to determine jurisdiction and admissibility, investigation, arrest, appearance before the Court, and the hearing to confirm the charges against the accused.[49] A particular practical difficulty, discussed as part of the pre-trial stage, is the difficulty prosecutors may face in the investigation stage. Specifically, the "investigation depends on the receptivity of the domestic legal system...because the Prosecutor must conduct investigations on the territory of sovereign states."[50]

Chapter 6 deals with the location of trial, public versus *in camera* hearings, the right of the accused to be present and have access to interpretation services, choice of legal counsel, evidence, sentencing procedure, and appeal mechanisms.[51] Of interest to common lawyers is the use of "all relevant and necessary evidence [with] no general rule excluding hearsay or indirect evidence".[52]

Chapter 7 on 'Punishment and the rights of victims' is different from the previous chapters because Professor Schabas has little material from the Rome Statute to consider here. The punishment of convicted offenders is guided by Articles 77 and 78 and as such leaves considerable discretion to the judges.[53] The author therefore examines the manner in which that discretion might be used by reference to decided cases from the *ad hoc* international criminal tribunals. Of interest is the author's reference to the debates at the Rome Conference

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[48] Specifically at 94-96, 118, 120 and 130.
[49] At 94-117.
[50] At 104.
[51] At 118-136.
[52] At 125.
[53] At 137.

on the possibility of punishment by the death penalty.[54] The chapter concludes by reference to the enforcement of penalties and the treatment and role of victims of crime.[55]

The final chapter, Chapter 8 on 'Structure and administration of the Court', provides a standard explication of the Court's organisation. Special attention is focussed upon the judges of the Court and their obligations to be impartial and conscientious,[56] the independence of the Prosecutor, the non-judicial Registry, funding of the Court,[57] and administrative matters pertaining to the adoption of the Rome Statute.[58]

In conclusion, it might be easy to envisage a book about the International Criminal Court and the Rome Statute being a simple set of annotations to each provision of the Statute. This publication is clearly something more. Professor Schabas has adopted an approach that allows the reader to easily benefit from his extensive research and experience. Context is everything in law, whether domestic or international, and he has placed the reader in a position where ease of understanding of the fine distinctions may be gained confidently. By referring to the history of the crimes and procedures and the specific debates on the Rome Statute, Professor Schabas has provided the reader with a valuable introduction to an international institution in the making.

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[54] At 140-141.
[55] At 144-150.
[56] Eighteen are to be elected from the Assembly of State Parties. Expertise within the Bench must be spread between criminal law and international law.
[57] As a non United Nations body, the Court is self-funding and States parties contribute to it.
[58] At 151-164.
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